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was approved by the Assistant Secretary on December 19, 1980. (45 FR 83483)

(h) The State has met its plan commitment for hiring enforcement staff under an approved merit system for administration of its health and safety program pursuant to a July 3, 1980 memo from Don Owsley, Administrator of the Wyoming Occupational Health and Safety Department.

(i) As required by 29 CFR 1902.34(b)(3), the personnel operations of the Wyoming Occupational Health and Safety Department have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by the Office of Personnel Management in a letter dated October 17, 1980.

(j) In accordance with §1902.34 of this chapter, the Wyoming occupational safety and health plan was certified, effective December 30, 1980, as having completed all developmental steps specified in the plan as approved on April 25, 1974, on or before April 25, 1977. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[41 FR 28789, July 13, 1976, as amended at 41 FR 30329, July 23, 1976; 42 FR 45907, Sept. 13, 1977; 43 FR 25424, June 13, 1978; 43 FR 34463, Aug. 4, 1978; 45 FR 83485, Dec. 19, 1980; 45 FR 85740, Dec. 30, 1980; 47 FR 1290, Jan. 12, 1982. Redesignated at 50 FR 26558, June 27, 1985]

§ 1952.343 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, Compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Wyoming, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 6 safety and 2 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 27, 1985.

[50 FR 26558, June 27, 1985]

29 CFR Ch. XVII (7-1-01 Edition)

§ 1952.344 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after a determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Wyoming State plan for a period of at least one year following certification of completion of developmental steps (45 FR 85739). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Wyoming's occupational safety health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Wyoming plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective June 27, 1985.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Wyoming. The plan does not cover private sector maritime employment; employment on the Warren Air Force Base; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number

of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Wyoming is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[50 FR 26558, June 27, 1985, as amended at 62 FR 2564, Jan. 17, 1997; 65 FR 36628, June 9, 2000]

§ 1952.345 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval of the Wyoming plan under section 18(e) of the Act, effective June 27, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Wyoming plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under

the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Wyoming plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project